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**COLLECTED
ESSAYS ON
EXPANDING
ACCESS TO
JUSTICE**



Expanding Access to Justice: Alternatives to Full Representation in New York State

Randal Jeffrey¹

Ever since the Supreme Court handed down its landmark 1963 decision in *Gideon v. Wainwright*² establishing the right to counsel at state expense in criminal cases, those concerned with access to justice have advocated for an extension of this right to counsel in civil cases.³ While the Supreme Court has extended the right to counsel past the specific holding in *Gideon*, including to certain “quasi-criminal” cases, it has never interpreted the United States Constitution to require that the government provide a lawyer in purely civil cases.⁴ Thus, the provision of counsel to those who cannot afford an attorney has been left to a patchwork of programs throughout the country. In New York State, this “justice gap” is being filled in three ways: efforts to establish the right to counsel for particular types of civil cases; increases to civil legal services funding; and alternatives to full representation that contribute to filling in this justice gap.

This essay argues that, in a world where on the one hand low-income families and individuals face pervasive civil legal services needs and on the other hand there are limited financial resources, alternatives to full representation play an important and effective role in expanding access to justice. This essay will explore these alternatives in New York State. After briefly discussing the efforts to implement a right to counsel in civil cases and to increase funding for civil legal services, this essay will more closely examine a range of programs that provide alternatives to full representation and will discuss their import.

Civil *Gideon*: The Pursuit of a Right to Counsel

The most robust way to ensure that those who cannot afford an attorney have the most comprehensive access to justice is through the provision of full representation as a right. The right to counsel in civil court has gained increased attention throughout the United States in

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² 372 U.S. 335 (1963).

³ See Russell Engler, *Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?*, 9 SEATTLE J. FOR SOC. JUST. 97, 102 (2010); see also, e.g., Note, *The Right to Counsel in Civil Litigation*, 66 COLUM. L. REV. 1322 (1966).

⁴ Compare, e.g., *In re Gault*, 387 U.S. 1 (1967) (extending *Gideon* to juvenile delinquency proceedings); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (extending *Gideon* to misdemeanors when the defendant may be incarcerated as the result of a conviction), with, e.g., *Turner v. Rogers*, 564 U.S. 431 (2011) (holding that the state does not need to provide counsel in all civil contempt proceedings, even if the proceeding may lead to incarceration); *Lassiter v. Department of Social Servs. of Durham Cty.*, 452 U.S. 18 (1981) (holding that counsel need not be appointed in a parental rights termination proceeding). Of course, the Sixth Amendment provides for the right “to have the assistance of counsel” in criminal prosecutions, U.S. CONST. AMEND. VI, a specific provision on which those advocating for the right to counsel in civil cases cannot rely. Instead, these advocates rely on the more general Due Process Clause. In addition, individual states may establish a broader right to counsel under their state constitutions. For example, before *Lassiter* was decided, the New York State Court of Appeals extended the right to counsel to parents facing child neglect proceedings in *In Re Ella B.*, 30 N.Y.2d 352 (1972). This judicial extension received statutory codification in the Family Court Act section 262, which also provides a right to assigned counsel in contempt proceedings, such as for a willful violation of a child support order. N.Y. FAMILY COURT ACT § 262.

recent years.⁵ Thus, in 2006, the American Bar Association adopted a resolution urging “federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.”⁶ Advocates have advanced a number of arguments for the establishment of a right to counsel in civil cases, including going so far as to ground the right in international human rights documents.⁷ Over the years, efforts to expand the right to counsel to civil cases have even achieved some limited statutory success.⁸

In New York State, consideration of the right to counsel in civil cases can begin with an examination of the number of civil cases in which the right would be provided. The numbers are daunting. In New York, there are 1.8 million unrepresented parties annually.⁹ This reflects the sheer volume of litigation in New York, including consumer credit, foreclosure, housing, and divorce, custody, and child support cases. There are many more civil cases – many if not most of which have unrepresented parties – conducted before administrative tribunals each year. For example, annually there are close to 300,000 New York Office of Temporary and Disability Assistance fair hearing requests, which primarily concern cash assistance, Supplemental Nutrition Assistance Program (SNAP/food stamp), and Medicaid matters.¹⁰ And at the City level, there are even more legal proceedings, for example: 10,000 cases at the Tribunal at the Department of Consumer Affairs (DCA); over 700,000 cases at the Environmental Control Board; 40,000 cases at the Tribunal at the Department of Health and Mental Hygiene (DOHMH); 12,000 cases at the New York City Housing Authority- Impartial Hearing Office; and 100,000 cases at the Tribunal at the Taxi and Limousine Commission (TLC).¹¹ On top of this are all the times that people might want to consult with a lawyer when determining whether the courts are an appropriate forum to address a problem or even on what course of conduct to take without formal court involvement. For example, one survey that focused on broader civil legal services needs found that people experience on average 2.1 civil justice situations per year.¹² With the two million adult New Yorkers living in poverty,¹³ a similar frequency in New York could translate into over four million times per year in which impoverished New Yorkers could benefit from free legal services.

⁵ See, e.g., Engler, *supra* note 3, at 100-01.

⁶ See A.B.A. RESOLUTION 112A (2006). Thirty-four states have now established Access to Justice Commissions. See *ATJ Commissions, Directory and Structure*, A.B.A., http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-commissions/commission-directory.html.

⁷ Martha Davis, for example, argues that advocates should rely on the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) when making the case for a right to counsel in civil cases. See Martha F. Davis, *Race and Civil Counsel in the United States: A Human Rights Progress Report*, 64 SYRACUSE L. REV. 447 (2014).

⁸ See Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. 245 (July-August 2006).

⁹ See PERMANENT COMMISSION ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 24 (Nov. 2015), available at http://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Report-V5.pdf.

¹⁰ See N.Y.S. OFFICE OF THE COMPTROLLER, DIV. OF STATE GOV’T ACCOUNTABILITY, BENEFIT ELIGIBILITY ASSESSMENT PROCESS 4 (2014), available at <http://osc.state.ny.us/audits/allaudits/093014/12s51.pdf>.

¹¹ See *Tribunals*, NYC ADMIN. JUSTICE COORDINATOR, [HTTP://WWW.NYC.GOV/HTML/AJC/HTML/TRIBUNALS/TRIBUNALS.shtml](http://www.nyc.gov/html/AJC/html/TRIBUNALS/TRIBUNALS.shtml) (last visited May 13, 2016).

¹² See Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, cited in Katherine Alteneider & Linda Rexer, *Consumer Centric Design: The Key to 100% Access*, 16 J. L. SOCIETY 7, 9 n.16 (2014).

¹³ See N.Y.S. COMMUNITY ACTION ASS’N, NEW YORK STATE POVERTY REPORT 5 (2015), available at <http://nyscommunityaction.org/wp-content/uploads/2014/03/2015-Poverty-Report-w-50th-logos-for-online.pdf>.

Given the extent of the need for counsel, any consideration of the right to counsel in civil cases must consider weighing factors and drawing lines as to how far such a right should extend.¹⁴ This is no different from the criminal context, where the courts have established limits on the right to counsel. For example, the Supreme Court has held that there is no right to state-provided counsel in some criminal proceedings unlikely to result in incarceration.¹⁵

One example of a legal matter that falls on the side of the right to counsel being not necessary is parking tickets. With New York City issuing over nine million parking tickets in 2014,¹⁶ there is little argument that there should be a right to counsel to contest these tickets, even though these tickets can adversely impact low-income New Yorkers in a variety of ways.¹⁷ At a cost to the government of providing counsel at even the extremely low amount of \$200 per case, given the percentage of New York City residents who live in poverty, the provision of a right to counsel to contest parking tickets could cost maybe half a billion dollars. Further, substantively the parking tickets themselves range from \$45 to \$180.¹⁸ Thus, providing counsel to challenge parking tickets would cost the government more than it could potentially collect from issuing the tickets in the first place.

At the other end of the spectrum, the right to counsel in housing court has seen perhaps the most forceful advocacy of any of the basic human needs referenced by the American Bar Association. This is particularly true in New York City, where advocacy for the right to counsel in the City's Housing Courts has been continuous.¹⁹ Advocacy on this issue has most recently been picked up by the Right to Counsel NYC Coalition, a coalition of "tenant organizing groups, tenant advocates, law schools and legal services organizations," including NYLAG.²⁰ The New York Law School Impact Center for Public Interest Law's Right to Counsel Project, through its academic and other support, plays a leading role in advancing the mission of this Coalition.²¹

¹⁴ See Engler, *supra* note 3.

¹⁵ See *Scott v. Illinois*, 440 U.S. 367 (1979).

¹⁶ See Amber Jamieson, *This App Will Fight Your Parking Ticket So You Don't Have To*, N.Y. POST, June 14, 2015, <http://nypost.com/2015/06/14/this-app-will-fight-your-parking-ticket-so-you-dont-have-to/>.

¹⁷ The ticket costs can present a hardship for some individuals. In addition, the consequences of accumulating unpaid parking tickets can be severe. See Monica Davey, *Ferguson One of 2 Missouri Suburbs Sued Over Gantlet of Traffic Fines and Jail*, N.Y. TIMES, Feb. 8, 2015, http://www.nytimes.com/2015/02/09/us/ferguson-one-of-2-missouri-suburbs-sued-over-gantlet-of-traffic-fines-and-jail.html?_r=0.

¹⁸ See *Tribunals*, NYC ADMIN. JUSTICE COORDINATOR, [HTTP://WWW.NYC.GOV/HTML/AJC/HTML/TRIBUNALS/TRIBUNALS.SHTML](http://www.nyc.gov/html/ajc/html/tribunals/tribunals.shtml) (last visited May 13, 2016).

¹⁹ See Raymond H. Brescia, *Sheltering Counsel: Toward a Right to a Lawyer in Eviction Proceedings*, 25 *Touro L. Rev.* 187 (2009) (discussing the 2008 New York State Bar Association conference, *An Obvious Truth: Creating an Action Blueprint for a Civil Right to Counsel in New York State*).

²⁰ See *Home*, RIGHT TO COUNSEL NYC COALITION, <http://www.righttocounselnyc.org/> (last visited Mar. 14, 2016); *About*, RIGHT TO COUNSEL NYC COALITION, <http://www.righttocounselnyc.org/about> (last visited Mar. 14, 2016).

²¹ See *Right to Counsel Project*, NEW YORK LAW SCHOOL, IMPACT CENTER FOR PUBLIC INTEREST LAW, <http://www.nyls.edu/impact-center-for-public-interest-law/projects-and-institutes/right-to-counsel-project/> (last visited Mar. 14, 2016).

In 2007, City Councilmember Rosie Mendez sponsored a bill which would provide all low-income tenants 62 and older the right to free counsel in housing court.²² This effort, however, was a casualty of the Great Recession, with the City Council reluctant to pass the legislation given its cost. This effort to secure a right to counsel in housing court was revived after the change in administration from Mayor Michael Bloomberg to Mayor Bill de Blasio in 2014. Emblematic of this change was the appointment of Steven Banks, who had been the Attorney-in-Charge of The Legal Aid Society of New York and was a tireless advocate for the right to shelter for homeless families and individuals, to Commissioner of the City's Human Resources Administration.²³ Then, later in 2014, four bills were introduced to the City Council: one provides for the right to counsel for all tenants at or below 125 percent (later amended to 200 percent) of the poverty level, while the other three provide for a right to counsel in housing court for specific populations.²⁴ Cost continues to be a factor, with the City of New York Independent Budget Office estimating that the cost of providing counsel under the bill that would provide counsel to all tenants at or below 125 percent of poverty is between \$173 million and \$276 million annually.²⁵ While none of these bills has been enacted, the advocacy surrounding the right to counsel in housing court has informed the dramatic increase in funding for eviction prevention legal services discussed below.

Funding for Civil Legal Services: Meeting the Need for Civil Legal Services Through Increased Funding

The federal government is the primary source of funding for civil legal services through the Legal Services Corporation (LSC). However, adjusted for inflation, this funding peaked more than 30 years ago, in 1981.²⁶ At its current funding level of \$385 million annually, LSC funding represents less than ten dollars for each person in the United States living in poverty.

²² See Int. 648 (City of New York 2007), available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=447249&GUID=FF74541F-777E-4917-AE3B-E4614707BEB4&Options=ID%7cText%7c&Search=648>; Manny Fernandez, *Free Legal Aid Sought for Elderly Tenants*, Nov. 16, 2007, http://www.nytimes.com/2007/11/16/nyregion/16housing.html?_r=0; Press Release, Brennan Center Strategic Fund, "Right to Counsel" Bill for Low-Income Seniors: First of Its Kind Law Could Serve as Model for Other Cities (Nov. 15, 2007), <https://www.brennancenter.org/sites/default/files/legacy/Justice/Right%20to%20Counsel%20Release%202011-15-07.pdf>. The bill set the income eligibility for counsel as the income eligibility for the New York Senior Citizen Rent Increase Exemption (SCRIE) program.

²³ More recently, Mayor de Blasio appointed Commission Banks to oversee the City's Department of Homeless Services. See *Gilbert Taylor, New York City Homelessness Chief, Quits Post*, N.Y. TIMES, Dec. 15, 2015, <http://www.nytimes.com/2015/12/16/nyregion/gilbert-taylor-new-york-city-homelessness-chief-to-leave.html>.

²⁴ See NEW YORK CITY BAR ASS'N, REPORT ON LEGISLATION BY THE PRO BONO AND LEGAL SERVICES COMMITTEE AND HOUSING COURT COMMITTEE (2015), available at <http://www2.nycbar.org/pdf/report/uploads/RighttoCounselinHousingNYCProBonoHousingCourtReportFINAL2.27.15.pdf> (describing Int. 214-2014 (all low-income tenants); Int. 221-2014 (parents with minor children); Int. 96-2014 (those 62 and older); and Int. 501-2014 (disabled tenants)). Int. 214-A amended Int. 214 in 2016 to cover all tenants at or below 200 percent of poverty. Int. 214-A, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80>.

²⁵ Memorandum, New York City Independent Budget Office, Estimate of the Cost of Legal Counsel in Housing Court and Potential Shelter Savings Due to Averted Evictions, at 5 (Dec. 10, 2014), available at <http://www.ibo.nyc.ny.us/iboreports/2014housingcourtleter.pdf>. Providing the right to counsel would also generate financial savings to the City. A report prepared in 2016 for the New York City Bar Association by Stout Risius Ross, Inc. found that providing a right to counsel to tenants at or below 200 percent of poverty under Int. 214-A would result in savings from eviction prevention that would exceed the cost of providing counsel by \$320 million annually. STOUT RISIUS ROSS, INC., THE FINANCIAL COST AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL IN EVICTION PROCEEDINGS UNDER INTRO 214-A (2016), http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf.

²⁶ See Brescia, *supra* note 19, at 220.

In stark contrast to the federal government's failure to increase funding for civil legal services, there has been a renaissance in funding for civil legal services in New York State in recent years.²⁷ All three branches of State government, and locally New York City as well, have engendered a sea change in the provision of free civil legal services. Most notably, former Chief Judge Jonathan Lippman has led on the State level with steadily increasing amounts of Judiciary Civil Legal Services funding, set to reach \$100 million annually in State fiscal year 2017.²⁸ These efforts culminated in the establishment of the Permanent Commission on Access to Justice.²⁹

There have also been more specific funding initiatives at the State and City levels. The New York City Human Resources Administration has dramatically increased its funding for eviction prevention and anti-harassment tenant protection legal services. HRA doubled and then redoubled its funding for its Homelessness Prevention Law Project to \$25.8 million annually, and more recently added an additional \$33 million annually to provide anti-harassment and tenant protection legal services in specific zip codes in each of the five boroughs.³⁰ Other government initiatives that have increased civil legal services funding have included State foreclosure prevention funding,³¹ immigrant opportunities,³² Citywide legal services,³³ legal services for the

²⁷ Former Chief Judge Jonathan Lippman has termed this the "access-to-justice" revolution. See Hon. Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U. L. REV. 1569 (2014).

²⁸ The Judiciary Civil Legal Services funding increased each year as follows: \$12.5 million in State Fiscal Year (SFY) 2012; \$25 million in SFY13; \$40 million in SFY14; \$55 million in SFY15; \$70 million in SFY16; and \$85 million in the Judiciary Budget for SFY17. This is on top of \$15 million in IOLA rescue funding; this fund was designed to supplement the more limited and less reliable sources of funding. See *id.* at 1573. Remarkably, the Chief Judge commenced and expanded this funding at a time of constrained State budgets. See *id.* at 1574 (noting that the Judiciary budget increased funding for civil legal services at the same time that the budget was reduced by \$170 million, which resulted in layoffs, reduced court hours, and program cutbacks).

²⁹ See Press Release, New York State Unified Court System, Chief Judge Announces Creation of Permanent Commission on Access to Justice (July 22, 2015), https://www.nycourts.gov/PRESS/PDFs/PR15_07.pdf. The Chief Judge originally created this as the Task Force to Expand Access to Civil Legal Services in New York in 2010. See Press Release, New York State Unified Court System, Task Force to Support Chief Judge's Efforts to Ensure Adequate Legal Representation in Civil Proceedings Involving Fundamental Human Needs (June 9, 2010), https://www.nycourts.gov/press/pr2010_09.shtml.

³⁰ See Testimony of Commissioner Steven Banks, New York City Human Resources Administration, Oversight Hearing Addressing the Homelessness Crisis, New York City Council Committee on General Welfare (Dec. 9, 2015), available at http://www1.nyc.gov/assets/hra/downloads/pdf/news/testimonies/2015/dec/Oversight%20Hearing_Homelessness120915_final.pdf.

³¹ New York State's Division of Housing and Community Renewal (DHCR) launched its Subprime Foreclosure Prevention Services Program in 2008. See *New York DHCR Announces Grants to Address Subprime Foreclosure Crisis*, NAT'L COUNCIL OF STATE HOUSING AGENCIES (Apr. 6, 2010), <https://www.ncsha.org/story/new-york-dhcr-announces-grants-address-subprime-foreclosure-crisis>. Later the New York State Attorney General's Office assumed funding for foreclosure prevention legal services.

³² The Immigrant Justice Corps was launched in 2014 with its inaugural class of 25 two-year fellows and expanded with an additional 35 fellows in its second year. See Liz Robbins, *Program Providing Legal Help to Immigrants Will Expand Beyond New York City*, N.Y. TIMES (May 13, 2015), <http://www.nytimes.com/2015/05/14/nyregion/program-providing-legal-help-to-immigrants-will-expand-beyond-new-york-city.html>. The City Council also launched an Unaccompanied Minor Children Initiative in 2014, with \$1.9 million in funding. See Press Release, New York City Council, NYC Council Speaker Melissa Mark-Viverito, the Robin Hood Foundation and New York Community Trust Announce New \$1.9 Million Unaccompanied Minor Initiative (Sept. 23, 2015), <http://council.nyc.gov/html/pr/092314um.shtml>.

³³ New York City allocated \$3.75 million in Citywide legal services in Fiscal Year 2016. CITY COUNCIL OF THE CITY OF NEW YORK, FISCAL YEAR 2016, ADOPTED EXPENSE BUDGET 65 (June 26, 2015), available at <http://council.nyc.gov/html/budget/2016/skdc.pdf>.

working poor,³⁴ and Veterans legal services.³⁵ Even with all of this additional funding, there are still enormous unmet civil legal services needs.

Expanding Access to Justice Through Alternatives to Full Representation: A View From the Field

It is beyond dispute that it is better for someone with a legal issue – whether it is an adversarial case in court or an out-of-court legal matter – to have full representation by a lawyer than to be unrepresented, regardless of whether the lawyer is provided through a right to counsel or available through increased funding for civil legal services.³⁶ But even if the current efforts to establish a right to counsel in certain cases are successful and if funding for civil legal services increases even more substantially than it has already, the majority of New Yorkers with civil legal services needs who cannot afford an attorney will continue to go without such full representation for the foreseeable future. This does not mean, though, that those without full representation need go without any assistance to increase their access to justice. There are alternatives to full representation that can and do play an important role in bridging the justice gap.

New York State, with the judiciary at the helm,³⁷ has been a leader in addressing the justice gap through alternatives to full representation. Over the years, programs to provide legal information to a large number of litigants and programs to provide limited representation have been established. Motivating all of these programs is the recognition that current resources are insufficient to provide full representation in all cases, and that alternatives can have a positive impact in cases, improving access to justice while at the same time recognizing that there is the potential for more to be done. As will be seen, each of these programs is unique, fulfilling its own niche within the broader effort to improve access to justice.³⁸ NYLAG has participated in many of these efforts, allowing the author to draw on these experiences.

Legal Information

The first type of assistance less than full representation is the provision of legal information concerning the justice system. The general goal of such information is to make the legal system friendlier to *pro se* litigants.

³⁴ New York City allocated \$1.725 million in legal services for the working poor in Fiscal Year 2016. *Id.*

³⁵ New York City devoted \$350,000 to Veterans legal services in Fiscal Year 2016. *Id.* at 103.

³⁶ Of course, there may be situations in which a lawyer does more harm than good. But a lawyer complying with the rules of ethics should not cause such harm. For example, the New York Rules of Professional Conduct require “competency,” with the Rules describing “competent representation” as representation that “requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” N.Y. RULES OF PROF’L CONDUCT r.1.1.

³⁷ In some respects, the judiciary has more of an incentive to address the justice gap through alternatives to full representation. While the loyalty of practicing attorneys lies with their clients, the judiciary is responsible for the legal system as a whole. See Fern Fisher, *Moving Toward a More Perfect World: Achieving Equal Access to Justice Through a New Definition of Judicial Activities*, 17 CUNY L. REV. 285, 286 (2014) (“[T]he judge’s role also includes stewardship over the improvement of laws, the legal system, and the administration of justice.”).

³⁸ Some have termed this “100% access,” defined as “a system in which we can provide some form of effective legal assistance to all people facing civil legal issues.” Altenecker & Rexer, *supra* note 12, at 7.

Help Desks

Legal help desks are the most well established means for expanding access to justice with services that are short of full representation. In New York City, there are an array of legal help desks, which primarily provide information. Housing Court Answers (formerly the City-Wide Task Force on Housing Court) runs the oldest such help desks, having started providing this service for housing court clients in 1981.³⁹ Civil Legal Advice and Resource Office (CLARO), which is run by the New York State Courts Access to Justice Program, provides information for clients confronting consumer debt cases.⁴⁰ Legal Information for Families Today (LIFT) has provided legal information for family court litigants since 1996.⁴¹ And Project FAIR has been providing legal information to appellants with administrative fair hearings before the Office of Temporary and Disability Assistance, primarily on public assistance, SNAP (food stamp), and Medicaid matters, in New York City since 2001.⁴²

Complementing physical help desks, on-line or virtual help desks also provide access to legal information for those with access to the internet. LawHelpNY provides extensive legal information concerning a wide variety of substantive legal issues as well as information on available free civil legal services.⁴³ The New York Courts have established CourtHelp, which provides more focused information for *pro se* litigants navigating a variety of courts.⁴⁴

Legal help desks represent the highest volume of legal assistance to unrepresented litigants. They allow non-lawyers to better understand how the legal system operates, both in terms of the often arcane procedures and the substance of the cases that fall within the help desk's mandate. These help desks are highly successful at providing limited services to thousands of litigants each year. With so many unrepresented litigants in the courts and before administrative agencies, help desks play a pivotal role in ensuring that these litigants have access to at least some legal information to assist them with their cases.

Navigators

The Committee on Non-Lawyers and the Justice Gap launched the Court Navigators Program in 2014 to provide assistance to unrepresented litigants in Housing Court in Brooklyn and in the Civil Court Consumer Debt Part in the Bronx.⁴⁵ The Committee engages in a variety of methods of support for unrepresented litigants, ranging from what can best be termed as moral support to describing the court process to assisting unrepresented litigants in answering court questions.⁴⁶

³⁹ See *About Housing Court Answers*, HOUS. CT. ANSWERS, <http://cwtfhc.org/about-us/> (last visited Mar. 14, 2016).

⁴⁰ See *About CLARO*, CIV. LEGAL. ADVICE & RESOURCE OFF., <http://www.claronyc.org/claronyc/default.html> (last visited Mar. 14, 2016).

⁴¹ See *Mission and History*, LEGAL INFO. FOR FAMILIES TODAY, <http://www.liftonline.org/about/who-we-are/mission-and-history> (last visited Mar. 14, 2016).

⁴² See *Project FAIR*, N.Y. LEGAL ASSISTANCE GROUP, [HTTP://NYLAG.ORG/UNITS/GENERAL-LEGAL-SERVICES/PROJECTS/PROJECT-FAIR](http://nylag.org/units/general-legal-services/projects/project-fair) (last visited Mar. 14, 2016).

⁴³ See *About Us*, LAWHELPNY, <http://www.lawhelpny.org/about-us> (last visited Mar. 14, 2016).

⁴⁴ See *COURTHELP*, <https://www.nycourts.gov/courthelp/> (last visited Mar. 14, 2016).

⁴⁵ See Lippman, *supra* note 27, at 1586-87 (describing the Navigator program).

⁴⁶ See *NEW YORK STATE COURT NAVIGATOR PROGRAM*, COMMITTEE ON NONLAWYERS AND THE JUSTICE GAP, NAVIGATOR SNAPSHOT REPORT 5 (DEC. 2014), available at <http://nylawyer.nylj.com/adgifs/decisions15/022415report.pdf>.

This program relies on the support of Housing Court Answers and University Settlement in Brooklyn and the Access to Justice Program in the Bronx.⁴⁷

The Committee issued a “Snapshot” report at the end of 2014 to gauge the initial impact of the courtroom navigators.⁴⁸ This report described the actual workings of the program, gave the results of a litigant survey conducted in the summer of 2014, made recommendations, and provided the perspective of the judiciary.⁴⁹ The survey, while limited, did report that clients found that the navigators answered their questions, helped them to understand the proceedings, and “helped them feel that progress was being made in their case.”⁵⁰

Legal Hand

Just this past year, the Center for Court Innovation (CCI) launched Legal Hand, an initiative to provide legal information, assistance, and referrals at three neighborhood storefronts.⁵¹ To operate these storefronts, CCI partnered with three Citywide legal services organizations – Legal Aid, Legal Services-NYC, and NYLAG.⁵² Legal Hand services are provided in neighborhoods with a high need for legal services, in Brownsville and Crown Heights in Brooklyn and Jamaica in Queens.⁵³

The Legal Hand model is well suited to assist low-income New Yorkers with civil legal matters that are not in court. The legal needs of community members are much broader than requiring assistance with court cases. By placing staff in accessible community offices and specifically conducting outreach for community members to visit the offices for legal matters that are not in court, Legal Hand promises to fill gaps in services not currently filled by help desks and in-court navigators.

Mobile Community Offices

NYLAG, in partnership with the Access to Justice Program, launched the Mobile Legal Help Center (MLHC) in 2012.⁵⁴ The first of its kind in the country – a law office on wheels - the MLHC allows NYLAG to provide direct community access to legal services at a different location every day.⁵⁵ While the MLHC serves as intake for NYLAG’s traditional programs, with clients being evaluated for representation, the MLHC also serves the important function of providing legal information and advice to clients in their communities. As with the Legal Hand storefront offices, MLHC staff not only provide assistance on matters that are in court or before administrative agencies. They also provide assistance on out-of-court matters and information on what is amenable to a court or agency resolution.

⁴⁷ See *id.* at 2-6.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 7.

⁵¹ See *Legal Hand*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org/legal-hand> (last visited Mar. 14, 2016).

⁵² See *Citizens Lend a Legal Hand*, NYLAG (Nov. 24, 2015), <http://nylag.org/news/2015/11/citizens-lend-a-legal-hand>.

⁵³ See *Legal Hand*, *supra* note 51.

⁵⁴ See *NYLAG Launches Mobile Legal Help Center*, NYLAG (Apr. 6, 2012), <http://nylag.org/news/2012/04/nylag-launches-mobile-legal-help-center>.

⁵⁵ See Merritt C. Birnbaum & Randal S. Jeffrey, *NYLAG Mobile Legal Help Center’s Challenges and Successes*, 46 CLEARINGHOUSE REV. 406 (2013).

Court DIY Forms

Not to be forgotten in the discussion of the range of legal information available to those without attorneys is the creation of Court Do-It-Yourself forms to enable *pro se* litigants to better navigate the judicial system. The New York Court's Access to Justice Program has been a leader in the creation of these forms, with the establishment of twenty-four interactive computer programs for the drafting of forms for various court actions.⁵⁶ While not providing individualized assistance to unrepresented litigants, these efforts improve access to justice by making the court system more accessible.

Limited Representation

In addition to legal information, some programs bridge the justice gap by providing limited scope or “unbundled” or “discrete task” legal services.⁵⁷

Volunteer Lawyer for the Day

Justice Fern Fisher launched the Volunteer Lawyer for a Day (VLFD) program in Housing Court in New York City in 1997. This expanded to consumer debt cases with the Consumer Debt VLFD Program in 2005. Currently the Access to Justice Program supervises the VLFD Program in Brooklyn and Manhattan in Housing Court, while NYLAG, the New York County Lawyers' Association (NYCLA), and the Brooklyn Bar Association – Volunteer Lawyers Project (BBA-VLP) (collectively the Consumer Credit VLFD Consortium) provide the supervising attorneys for the Consumer Debt VLFD Program.

Since its inception, the Consumer Debt VLFD Program has represented over 20,000 litigants in court.⁵⁸ In State Fiscal Year 2015, the Consumer Debt Consortium serviced 3,849 clients and provided an estimated \$6 million in benefits to clients through consumer credit claims that were dismissed or reduced.⁵⁹ The Consumer Debt VLFD Consortium achieved these results using only four part-time staff, each supervising a cadre of volunteers in one of the four boroughs of the Bronx, Brooklyn, Manhattan, and Queens.

It should be noted that the VLFD model has not been without criticism, at least in the Housing Court context.⁶⁰ For example, a Housing Court respondent facing eviction cannot rely on the threat of going to trial represented by a lawyer if a settlement is not reached during the day that the respondent has a lawyer. This leverage is unavailable during the negotiation for the day. This critique, though, uses the yardstick of full representation to judge representation for the day. Representation for the day by a trained lawyer, or a lawyer under expert supervision, does lead to better results for many clients represented on that day and does not lead to a worse result if, for example, no settlement is reached that day. In fact, a preliminary report of the initial implementation of the program in Housing Court concluded that the program was a success on

⁵⁶ See Fisher, *supra* note 37, at 292.

⁵⁷ This essay uses the term “limited scope” to describe representation that is less than full representation, in keeping with the New York State Rules of Professional Conduct. See N.Y. RULES OF PROF'L CONDUCT r. 1.2(c) & 6.5.

⁵⁸ See *20,000 Consumer Debt Defendants Served by VLFD Program*, N.Y.S. COURTS ACCESS TO JUSTICE PROGRAM, http://webserver.courts.state.ny.us/ip/nya2j/news_archive.shtml (the Program represented 20,000 clients from 2009 to 2015).

⁵⁹ This level of impact was achieved with only \$244,476 in Judiciary Civil Legal Services funding.

⁶⁰ See Brescia, *supra* note 19, at 234-35.

a number of levels, and most importantly in improving outcomes for those litigants represented through the program.⁶¹

Foreclosure Settlement Conferences

Another form of limited scope representation is representation for purposes of settlement conference in foreclosure cases. In the wake of the Great Recession and its foreclosure crises, New York State instituted mandatory settlement conferences as the first step in mortgage holders pursuing foreclosure litigation.⁶² Further, the courts agreed to allow attorneys to put in limited scope appearances to represent foreclosure litigant defendants for purposes of these settlement conferences only.

Representation in mandatory settlement conferences provides an effective means to resolve some foreclosure cases without the need for full litigation. Attorneys have taken advantage of this. Dramatically, this has led to an increase of representation to 61 percent of defendants in settlement conferences, up from 33 percent in 2011.⁶³ Litigated foreclosure cases require extensive resources and time commitments, given that foreclosure cases in New York last on average close to three years,⁶⁴ making limited representation for settlement conference purposes only an attractive alternative.

Alternatives to Full Representation in Practice

As discussed above, there have been a wide variety of programs instituted in New York State, and in particular in New York City, to expand access to justice in ways that provide less than the traditional full representation. Just as seeking the right to counsel in certain limited types of cases does not diminish the argument or necessity for seeking this right for other types of cases, so too the provision of less than full representation for some clients does not diminish the argument that full representation should be provided in those types of cases in the future.

Former Chief Judge Lippman, with his programs and in his writing, has advocated for such an incrementalist approach while recognizing the benefits of full representation.⁶⁵ Under this approach, the courts, in partnership with the legal services community and the bar more generally, pursue a wide range of initiatives that allow us to “incrementally move closer to a civil Gideon.”⁶⁶ Similarly, in California, the Model Equal Justice Act also takes the approach of providing for less than full representation in certain cases as a way to provide equal justice.⁶⁷

⁶¹ See OFFICE OF THE ADMINISTRATIVE JUDGE OF THE CIVIL COURT OF THE CITY OF NEW YORK ET. AL., VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED CIVIL LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008), available at http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf.

⁶² See Hon. Mark C. Dillon, *The Newly-Enacted CPLR 3408 for Easing the Mortgage Foreclosure Crisis: Very Good Steps, but Not Legislatively Perfect*, 30 PACE L. REV. 855, 856 (2010).

⁶³ See HON. LAWRENCE K. MARKS, 2015 REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS 5, available at <https://www.nycourts.gov/publications/pdfs/2015ForeclosureReport.pdf>.

⁶⁴ See N.Y.S. DEPT. OF FINANCIAL SERVS., REPORT ON NEW YORK'S FORECLOSURE PROCESS (2015), available at http://www.dfs.ny.gov/reportpub/fore_proc_report_052015.pdf.

⁶⁵ See Lippman, *supra* note 27, at 1587-88.

⁶⁶ *Id.* at 1587.

⁶⁷ See CAL. COMMISSION ON ACCESS TO JUSTICE, THE PATH TO EQUAL JUSTICE: A FIVE-YEAR STATUS REPORT ON ACCESS TO JUSTICE IN CALIFORNIA 6 (Oct. 2002), available at <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=QhMjgCPh4gg%3D&tabid=216>.

As a practitioner at an office that has been directly involved with many of the programs described above, it is absolutely clear to the author that these programs are of value to the clients that they serve. Legal services offices must struggle with limited funding and must prioritize their services on a daily basis. Our offices aim not only to provide high quality legal services to those we do represent, but also to have a broader impact by increasing the access to justice for those to whom we do not provide full representation.

Every day, NYLAG and our fellow legal services providers must inform the majority of those who come to us seeking legal services that we are unable to represent them due to a lack of sufficient funding. The frustration of not being able to represent countless intake callers is tempered by the knowledge that the callers can be directed to alternatives to full representation, such as sending a caller to a legal help desk, directing the caller to a volunteer lawyer for the day program or a storefront office, or pointing to DIY forms or other court resources that make the courts more accessible to *pro se* litigants. Many unrepresented litigants and others seeking legal services use these resources and tools to better understand their legal situation and to achieve a better outcome on their matter.

Another important consequence of these programs is that they place lawyers directly on the ground where unrepresented litigants struggle to navigate courts and understand the legal system. This daily interaction with *pro se* litigants gives legal services providers awareness of systemic problems both with the administration of justice and in the substantive areas of law. In some areas, such as the VLFD Consumer Credit program, lawyers providing limited legal services are the primary legal entity providing any service at all. In circumstances like this, lawyers involved in limited legal service have been instrumental in changing the culture of the courtroom, ensuring that represented plaintiffs do not take advantage of unrepresented litigants. Similarly, staff at the Project FAIR Help Desk have identified trends in problems with the administration of public benefits programs that have then been addressed with those administering these programs.

In sum, each of the programs described here is unique, with its own unique impact and efficacy. Even similar programs – such as legal help desks or Volunteer Lawyer for the Day programs – may have different results depending on their context. Ultimately, there should be a greater investment in continuing to review and evaluate these programs in order to more fully appreciate the impact that these programs have. Such evaluations will go far to confirm what those involved in these programs already know: alternatives to full representation can and do have an enormous, positive impact on the lives of low-income New Yorkers.⁶⁸ •

⁶⁸ There have been a few statistically rigorous program evaluations, such as one in two housing courts in Massachusetts. See BOSTON BAR ASSOCIATION TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES (2012), available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>; see also Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Courts: Results of a Randomized Experiment*, 35 L. & Soc'y REV. 419 (2001).